

AMENDED IN ASSEMBLY AUGUST 17, 2006

**SENATE BILL**

**No. 697**

---

**Introduced by Senator Soto Kuehl**  
**(Principal coauthor: Senator Speier)**  
**(Principal coauthor: Assembly Member Torrico)**

February 22, 2005

---

An act to amend Section 1877.1 of, and to add Section 1877.35 to, the Insurance Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to insurance fraud: add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

SB 697, as amended, ~~Soto Kuehl. Insurance fraud.~~ *Child care: provider organization: representation.*

*Existing law provides employees of public schools with the right to be represented in specific matters, including terms and conditions of employment.*

*This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be selected pursuant to a specified petition and election process. The bill would state the intent of the Legislature that the state action exemption to the application of federal and state antitrust laws be fully available to the extent that the activities of the family child care providers and their representatives are authorized under this article.*

*The bill would authorize the chosen provider organization to operate substitute child care provider pools; market family child care programs; offer business development programs for family child care*

*providers; meet with state regulatory agencies, as specified; and engage in various types of negotiation with public and private entities that administer state-funded subsidies for child care services, as specified. The bill would specify that the designation of a representative of the family child care providers, as specified, does not prevent the designated provider organization or any other organization or individual from appearing before, or making proposals to, the department at a public meeting or hearing, or at any other department forum. The bill would prohibit a provider organization from calling a strike and would prohibit the state and provider organizations from interfering with, intimidating, restraining, coercing, or discriminating against any family child care provider because the family child care provider joins or refuses to join a provider organization.*

~~(1) Existing law requires an insurer, upon written request of an authorized governmental agency, as defined, to release to the agency all relevant information deemed important to the agency that the insurer may possess relating to any specific workers' compensation insurance fraud investigation.~~

~~This bill would authorize the Public Employees' Retirement System to obtain information from an insurer for purposes of determining the eligibility of a member, or unlawful application or receipt of benefits, under the Public Employees' Retirement System, and would add the Public Employees' Retirement System to the list of authorized governmental agencies to which an insurer is required to release that information, as specified.~~

~~(2) Existing law authorizes the Director of the Employment Development Department to permit the use of information in his or her possession for specified purposes.~~

~~This bill would additionally authorize the director to release specified information to the Public Employees' Retirement System.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) *The Legislature finds and declares all of the*  
2     *following:*

3     (1) *It is necessary to enact legislation to improve access to,*  
4     *and the stability of, quality child care by providing collective*

1 *activities and other representation rights to family child care*  
2 *providers.*

3 *(2) There is a need to improve the quality of child care and to*  
4 *reduce turnover in the industry that is charged with providing*  
5 *safe and quality care for children in California. The industry*  
6 *suffers from low wages and a lack of benefits for child care*  
7 *providers that is causing high turnover among child care*  
8 *providers. High turnover among providers means that many*  
9 *children are not receiving the type of care they require in order*  
10 *to be prepared for, and adapt successfully to, school settings.*

11 *(3) (A) The family child care delivery system is fragmented*  
12 *because each provider enters into individual contracts with*  
13 *agencies that administer payments for subsidized child care. This*  
14 *means that family child care providers have little formal or*  
15 *collective input into the delivery of services that can improve the*  
16 *system. Family child care providers have no formal*  
17 *representation rights and are not covered by any law that grants*  
18 *them the right to collective action.*

19 *(B) In order to promote greater efficiency and stability in the*  
20 *child care system, it is necessary to enact legislation that will*  
21 *provide family child care providers with the right to formal*  
22 *representation, to enter into collective negotiations with public*  
23 *and private entities that administer public subsidy payments, and*  
24 *to meet and confer with regulatory agencies to discuss issues of*  
25 *mutual concern.*

26 *SEC. 2. Article 19.5 (commencing with Section 8430) is*  
27 *added to Chapter 2 of Part 6 of the Education Code, to read:*

28  
29 *Article 19.5. Family Child Care Provider Representation*  
30

31 *8430. The purpose of this article is to authorize family child*  
32 *care providers to select a provider organization for the purpose*  
33 *of being represented on all matters specified in this article.*

34 *8430.5. It is the intent of the Legislature that the state action*  
35 *exemption to the application of federal and state antitrust laws*  
36 *be fully available to the extent that the activities of the family*  
37 *child care providers and their representatives are authorized*  
38 *under this article.*

39 *8431. In this article, the following terms shall have the*  
40 *following meanings, unless the context requires otherwise:*

1 (a) “Family child care provider” or “provider” means either  
2 of the following:

3 (1) A family child care home provider that is licensed pursuant  
4 to Section 1596.80 of the Health and Safety Code.

5 (2) An individual who does both of the following:

6 (A) Provides care in a family child care home that is exempt  
7 from the licensing requirements.

8 (B) Participates in a subsidy program provided for in the  
9 Alternative Payment Program pursuant to Article 3 (commencing  
10 with Section 8220) or the Child Care for Recipients of the  
11 CalWORKs Program pursuant to Article 15.5 (commencing with  
12 Section 8350).

13 (b) “Negotiating representative” means the provider  
14 organization that providers may designate, in accordance with  
15 the provisions of this article, to be the exclusive representative  
16 for the providers.

17 (c) “Subsidy program” means a state funded program  
18 administered by the State Department of Education or the State  
19 Department of Social Services, or both, to assist families in  
20 purchasing child care, including, but not limited to, care  
21 provided for in Article 3 (commencing with Section 8220) and  
22 Article 15.5 (commencing with Section 8350).

23 (d) “Provider organization” means an organization to which  
24 both of the following apply:

25 (1) Includes family child care providers.

26 (2) Has as one of its main purposes the representation of  
27 family child care providers to public and private entities in the  
28 state.

29 (e) “Public Employee Relations Board” or “board” means the  
30 board established pursuant to Government Code Section 3541.

31 8431.5. (a) On or after January 1, 2007, family child care  
32 providers who meet the definition of paragraph (1) of subdivision  
33 (a) of Section 8431 may form, join, and participate in the  
34 activities of provider organizations of their own choice for the  
35 purpose of being represented on all matters specified in this  
36 article.

37 (b) Commencing on January 1, 2009, family child care  
38 providers who meet the definition of paragraph (2) of subdivision  
39 (a) of Section 8431 may form, join, and participate in the  
40 activities of provider organizations of their own choice for the

1 *purpose of being represented on all matters specified in this*  
2 *article.*

3 *(c) A family child care provider may refuse to join or*  
4 *participate in the activities of provider organizations.*

5 *(d) Upon the request of a provider organization, the*  
6 *Superintendent and the State Department of Social Services, with*  
7 *the assistance of counties and alternative payment programs,*  
8 *shall collect information regarding family child care providers*  
9 *described in paragraph (2) of subdivision (a) of Section 8431,*  
10 *similar to that collected by the State Department of Social*  
11 *Services regarding providers described in paragraph (1) of*  
12 *subdivision (a) of Section 8431, and make that information*  
13 *available to the provider organization. The costs of collecting the*  
14 *information, if that information has not been previously*  
15 *collected, shall be borne by any provider organization that*  
16 *requests the data.*

17 *8432. (a) Family child care providers may designate, in*  
18 *accordance with the provisions of this article, which provider*  
19 *organization, if any, shall be the negotiating representative for*  
20 *the providers.*

21 *(b) Only one unit of providers shall exist for the purposes of*  
22 *this article and that unit shall consist of all providers in the state.*

23 *(c) Notwithstanding subdivision (b), a provider organization*  
24 *may petition, in accordance with the provisions of this article, to*  
25 *serve as the sole negotiating representative of family child care*  
26 *providers described in paragraph (1) of subdivision (a) of*  
27 *Section 8431, but only if the petition is filed prior to January 1,*  
28 *2009. Any designation of a provider organization as the*  
29 *negotiating representative pursuant to this subdivision shall be*  
30 *terminated upon the petition of a provider organization to serve*  
31 *as the negotiating representative for a statewide unit of all*  
32 *providers.*

33 *8432.5. (a) If a provider organization petitions the board to*  
34 *serve as the negotiating representative for all family child care*  
35 *providers and provides written authorization to serve as the*  
36 *negotiating representative from a majority of the total number of*  
37 *providers in the unit as of January 1 of the year in which the*  
38 *petition is made, the board shall designate that provider*  
39 *organization as representative for all providers in the specified*  
40 *unit, if all of the following are true:*

1     (1) *The provider organization does not request an election*  
2     *under subdivision (d).*

3     (2) *No other provider organization petitions to serve as the*  
4     *negotiating representative for all family child care providers, as*  
5     *provided in subdivision (b).*

6     (b) *If a provider organization petitions the Public Employment*  
7     *Relations Board to serve as the negotiating representative for all*  
8     *family child care providers and provides written authorization to*  
9     *serve as the negotiating representative from at least 30 percent*  
10    *of the total number of providers in the unit as of January 1 of the*  
11    *year in which the petition is made, the petition shall be*  
12    *considered as a request for recognition as representative for all*  
13    *providers in the unit. Upon the filing of the petition with the*  
14    *board, the department and the State Department of Social*  
15    *Services shall provide to the board a list of all providers in the*  
16    *unit as of January 1 of the year in which the petition is made. If*  
17    *the unit includes providers described in paragraph (2) of*  
18    *subdivision (a) of Section 8431, and a list of the providers has*  
19    *not been previously prepared, the provider organization, or*  
20    *organizations, that filed the petition shall bear the costs of*  
21    *preparation of the list.*

22    (c) *If more than one provider organization petitions to serve*  
23    *as the negotiating representative for all family child care*  
24    *providers in the unit and each petitioning organization has*  
25    *written authorization to serve as the negotiating representative*  
26    *from at least 30 percent of the total number of providers in the*  
27    *unit, as provided in subdivision (b), an election shall be held*  
28    *within 90 days after the day on which the second petition is filed.*  
29    *The providers in the unit shall be offered the opportunity to*  
30    *choose between the following:*

31    (1) *One of the provider organizations to serve as the*  
32    *negotiating representative for all providers in the unit.*

33    (2) *No representation.*

34    (d) *If only one provider organization petitions to serve as the*  
35    *negotiating representative for family child care providers and the*  
36    *organization has the written authorization to serve as the*  
37    *negotiating representative from at least 30 percent of the total*  
38    *number of family child care providers in the unit, as provided in*  
39    *subdivision (b), the petitioning provider organization may*

1 *request that an election be held. The providers in the unit shall*  
2 *be offered the opportunity to choose between the following:*

3 *(1) Representation by the provider organization.*

4 *(2) No representation.*

5 *(e) (1) Upon receipt of a petition requesting recognition*  
6 *under this section, the board shall do all of the following:*

7 *(A) Verify the number of family child care providers who*  
8 *authorized the provider organization to serve as their negotiating*  
9 *representative under subdivisions (a) to (d), inclusive, as*  
10 *applicable.*

11 *(B) Hold elections under this section, as applicable, and verify*  
12 *their results.*

13 *(2) The board shall establish procedures to ensure the secrecy*  
14 *of any ballot cast in any election held pursuant to this section.*

15 *(3) (A) The costs of verifying the number of family child care*  
16 *providers who have authorized the selection of a provider*  
17 *organization shall be paid by the provider organization that*  
18 *submits the petition requesting recognition under this section.*

19 *(B) (i) The costs of the election shall be equally shared by*  
20 *each provider organization placed on the ballot.*

21 *(ii) If only one provider organization is placed on the ballot,*  
22 *the provider organization shall pay all costs of the election.*

23 *(4) (A) Subject to subparagraph (B), in any election held*  
24 *pursuant to this section, the provider organization that receives*  
25 *the greatest number of votes cast shall be designated as the*  
26 *exclusive negotiating representative for all family child care*  
27 *providers in the unit.*

28 *(B) A provider organization shall not be designated the*  
29 *exclusive negotiating representative for all providers in the unit*  
30 *if the greatest number of votes cast are for the choice of no*  
31 *representation.*

32 *8433. (a) (1) The initial designation of a representative*  
33 *pursuant to Section 8432.5 shall be for two or more years.*

34 *(2) After the initial period, the designated provider*  
35 *organization shall continue to be the negotiating representative*  
36 *until another election is held.*

37 *(b) (1) An election after the initial period of representation*  
38 *may be held only if both of the following are true:*

39 *(A) The initial two-year period has elapsed.*

1 (B) A petition is signed by more than 30 percent of the family  
2 child care providers in the unit and provided to the board.

3 (2) The election shall be held in the same manner as provided  
4 in Section 8432.5.

5 (3) The election shall be held no later than 90 days after the  
6 signatures on the petition submitted to the board have been  
7 verified pursuant to subparagraph (A) of paragraph (1) of  
8 subdivision (e) of Section 8432.5.

9 8433.5. (a) A provider organization designated as the  
10 representative for family child care providers pursuant to Section  
11 8432.5 shall be the negotiating representative for all providers in  
12 the unit for purposes designated in this article.

13 (b) A provider organization designated as the negotiating  
14 representative shall represent all family child care providers in  
15 the unit fairly and without discrimination and without regard to  
16 whether the providers are members of the provider organization.

17 (c) (1) The provider organization designated as the  
18 negotiating representative may charge a reasonable service or  
19 representation fee to nonmembers for representing them in  
20 negotiations, contract administration, and other activities  
21 pursuant to subdivision (b).

22 (2) The service or representation fee may not exceed the  
23 annual dues paid by members of the provider organization.

24 (3) The provider organization may negotiate with any public  
25 entity designated in subdivision (b) of Section 8434.7 in order to  
26 remit membership dues and any service fees to the provider  
27 organization from deductions to payments made by the public  
28 entity to providers.

29 8434. A provider organization may not call or direct a strike.

30 8434.5. A provider organization may operate substitute  
31 provider pools if those pools are not already being operated or  
32 provided in the community, may market family child care  
33 programs, and may offer business development programs for  
34 family child care providers.

35 8434.6. The State Department of Social Services and other  
36 state agencies with responsibility for the licensing of family child  
37 care providers shall consult at least once a year with the  
38 provider organization designated as the representative for family  
39 child care providers in order to identify areas of common  
40 concern and to improve consistency in the enforcement of



1 regulations affecting the licensing of family child care providers.  
2 In addition, upon written request by the provider organization,  
3 the State Department of Social Services and other state agencies  
4 shall consult with the negotiating representative for the purpose  
5 of engaging in joint discussions regarding proposals for  
6 revisions to the rules governing licensing of family child care  
7 providers, prior to the publication for comment of those  
8 proposals.

9 8434.7. (a) For the purposes of this section, the term  
10 “negotiate” includes the duty to do the following:

11 (1) Confer in good faith at all reasonable times.

12 (2) Memorialize in writing all of the matters agreed upon as a  
13 result of any negotiations.

14 (b) (1) Upon the request of the provider organization  
15 designated as the representative for family child care providers,  
16 the department or any other state agency that administers a  
17 statewide program of publicly funded subsidies for child care  
18 services, shall negotiate with the provider organization with  
19 regard to a reimbursement system for providers. Any agreement  
20 reached with regard to reimbursements shall be subject to  
21 appropriation by the Legislature and any necessary statutory and  
22 regulatory revisions.

23 (2) Upon the request of the negotiating representative, the  
24 department, its contractors, or any other state agency that  
25 administers a program of publicly funded subsidies for child care  
26 services shall negotiate with the provider organization the terms  
27 of the provision of child care services under a publicly funded  
28 subsidy program within the authority of the entity with which the  
29 provider organization negotiates. The parties may negotiate the  
30 frequency of, and the processes by which they will engage in,  
31 ongoing communications.

32 (3) To promote efficiency, if mutually agreed upon by all  
33 parties, the parties may negotiate collectively with more than one  
34 public or private entity that receives or administers state-funded  
35 public subsidies for child care services, and may negotiate a  
36 written agreement that applies to all parties involved.

37 (c) An agreement under this section may provide for binding  
38 arbitration of grievances.

39 (d) This section does not authorize negotiations over parent  
40 fee levels.

1     8435. *The designation pursuant to this article of a provider*  
2 *organization as the representative for family child care providers*  
3 *does not prohibit the provider organization, or any other*  
4 *organization or individual, from appearing before, or making*  
5 *proposals to, the department at a public meeting or hearing, or*  
6 *at any other department forum.*

7     8435.5. (a) *The state or provider organizations may not*  
8 *interfere with, intimidate, restrain, coerce, or discriminate*  
9 *against any family child care provider because the family child*  
10 *care provider joins or refuses to join a provider organization.*

11     (b) *For purposes of this section, “state” means any of the*  
12 *following:*

13     (1) *An agency, board, commission, department, office, or*  
14 *public benefit corporation of the state.*

15     (2) *An employee of the state.*

16     (3) *A contractor or subcontractor employed by the state.*

17     8436. *Family child care providers shall not be deemed to be*  
18 *employees of the state for any purpose of, and the providers shall*  
19 *be deemed to be self-employed for all purposes of, this article.*

20  
21  
22     **All matter omitted in this version of the bill**  
23     **appears in the bill as introduced in**  
24     **Senate, February 22, 2005 (JR11)**  
25